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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In The Matter of	
Assessment and Collection of Regulatory Fees for Fiscal Year 1995	**CC Docket No. 95-3**

REPLY COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, hereby submits its reply to comments addressing the revised Schedule of Regulatory Fees proposed in the Notice of Proposed Rule Making, FCC 95-14 ("NPRM") issued by the Commission on January 12, 1995 in the captioned proceeding. TRA herein reaffirms its opposition to the expansion and redefinition of the fees applicable to interexchange carriers ("IXCs") proposed in the NPRM (at ¶¶ 54-59). TRA also reiterates herein its recommendation that in the event the Commission expands its Schedule of Regulatory Fees to encompass resale carriers, it should adopt "Customer Units", rather than interstate minutes or revenues, as the "multiplier" for calculating the fees to be imposed on IXCs.

I. The Comments Confirm that Expansion of the Schedule of Regulatory Fees To Encompass Resale Providers of Interexchange Services Is Contrary To Congressional Intent and Sound Public Policy.

In its Comments, TRA argued that unless one simply assumes that the Congress did not understand or appreciate the import of its designation of "presubscribed lines" as the "multiplier" for the IXC regulatory fees listed in the Schedule of Regulatory Fees it included in Section 9 of the Communications Act of 1934, as amended, 47 U.S.C. § 159,[1] that designation evidences a Congressional intent not to include resale carriers among the entities upon whom such fees are to be assessed. TRA believes that the Congress, like the Commission, recognized that most resale carriers do not have access lines presubscribed to them because they are prevented, for technical reasons, from ordering customers' long distance service directly from local exchange carriers ("LECs").[2] Moreover, TRA emphasized that Section 9 of the Communications Act only authorizes the Commission to amend the Schedule of Regulatory Fees by adding, deleting or reclassifying services in the Schedule to "reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law." And as TRA pointed out, there have been no changes in the Commission's services as they relate to the resale of interexchange services since the Schedule of Regulatory Fees was first adopted. Having noted that the Commission is not

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[1] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(a), 107 Stat. 397 (approved Aug. 10 1993) ("1993 Budget Act").

[2] Policies and Rules concerning Changing Long Distance Carriers, 8 FCC Rcd. 3215, ¶ 20 (1993).

free to simply ignore the will of Congress or to assume that portions of a statute are "superfluous, void or of no significance," TRA argued that the Commission should abandon the NPRM proposal to assess regulatory fees on resale providers of interexchange services.

Other commenters, including trade associations, resale carriers, a facilities-based IXC and an LEC,[3] have voiced similar views and positions. Of particular note in this respect is LDDS Communications, Inc.'s citation to a statement of policy issued by the Commerce Committee of the U.S. House of Representatives (then the Committee on Energy and Commerce) in the Committee Report that accompanied the Federal Communications Commission Authorization Act of 1994.[4] Therein, the House Commerce Committee stressed that, "common carrier funding mechanisms" which "impose charges on both resellers and facilities-based providers should be rationalized so that [they] do not result in a 'double-counting' of the fee imposed on resellers."

It is the same public policy concerns expressed by the House Commerce Committee that TRA emphasized in its Comments. Noting the Commission's reaffirmation of the "numerous public benefits" generated by resale of interexchange

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[3] See Comments of GTE Service Corporation, LDDS Communications, Inc., the Competitive Telecommunications Association, America's Carriers Telecommunications Association, Hertz Technologies, Inc., and AVIS Rent A Car.

[4] Report on the Federal Communications Commission Authorization Act of 1994, Committee on Energy and Commerce, U.S. House of Representatives, 103rd Congress, 2nd Session, Report 103-844, October 6, 1994, at p. 11.

telecommunications services,[5] TRA argued in its Comments that the proposed expansion of the Schedule of Regulatory Fees to encompass resale providers of interexchange services does not constitute sound public policy. As TRA explained, any imposition of regulatory fees on resale carriers would represent double, triple or greater recovery of such assessments because any fees paid by resale carriers would be associated with interexchange facilities or carriage for which fees would have already been paid by underlying facilities-based carriers. And as TRA further explained, given that larger resale carriers often provide "wholesale" services to smaller resellers, fees could be paid again and again on the same interexchange carriage. Because facilities-based network providers, and to a lesser extent, "wholesale" resale carriers, would likely incorporate regulatory fees into their charges, resale carriers and their customers would effectively be hit with regulatory fees two, three or more times.

Multiple commenters confirmed TRA's view in this respect.[6] Indeed, even AT&T Corp., a long-time proponent of imposing regulatory fees on interexchange resellers, has recognized that "charges imposed upon IXCs must not unduly favor some

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[5] AT&T Communications: Apparent Liability for Forfeiture and Order to Show Cause, FCC 94-359, ¶ 12 (January 4, 1995) (citing Resale and Shared Use of Common Carrier Services, 60 F.C.C. 2d 261 (1976) ("Resale and Shared Use Order"), recon. 62 F.C.C. 2d 588 (1977), aff'd sub. nom. American Tel. & Tel. Co. v. FCC, 572 F 2d 17 (2d Cir.), cert. denied, 439 U.S. 875 (1978); Resale and Shared Use of Common Carrier Services, 83 F.C.C. 2d 167 (1980), recon. 86 F.C.C. 2d 820 (1981)) ("AT&T Forfeiture Order").

[6] See Comments of GTE Service Corporation, LDDS Communications, Inc., the Competitive Telecommunications Association, America's Carriers Telecommunications Association, Hertz Technologies, Inc. and AVIS Rent A Car.

IXCs, at the expense of others."[7] As TRA and other commenters have stressed, the extension of the Schedule of Regulatory Fees to encompass resale providers of interexchange services would disproportionately burden resale carriers and their customers. As eloquently expressed by Hertz Technologies, Inc.:

> A closely related, but different, effect is that resellers would pay the regulatory fee – once as part of the cost of the service from the underlying carrier, and again directly through the fee. This will result in a resale penalty that will both increase the cost to the end user and also reduce the difference between the reseller's rate and the typically higher rate of the facilities-based carrier. These combined effects are inequitable, will damage resellers' ability to compete in the marketplace, and will impede the price competition that has been at the center of the Commission's resale policy. Furthermore, these undesirable results reinforce the conclusion that Congress' omission of resellers from the original schedule was a conscious choice that may not be changed by the Commission. (footnote omitted).

Accordingly, TRA reaffirms here its position that regulatory fees should be imposed on facilities-based carriers alone, with resale providers contributing their share of the recovery of statutorily-mandated amounts indirectly through payment of rates and charges incorporating those fees.

II. In The Event That The Commission Elects To Levy Regulatory Fees Directly On Resale Providers Of Interexchange Services, It Should Adopt "Customer Accounts," Rather Than Interstate Minutes or Revenues, as the "Multiplier."

In the event that the Commission elects to expand its Schedule of Regulatory Fees to encompass interexchange resale carriers, TRA continues to urge the Commission to calculate the fees that would be imposed on IXCs on the basis of

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[7] Comments of AT&T citing Petitions for Waiver of Various Sections of Part 69 of the Commission's Rules, Memorandum Opinion and Order, 104 F.C.C. 2d 1132, 1180 (1986).

"Customer Units." As a "multiplier," "Customer Units" – i.e., the greater of (i) the number of presubscribed lines and (ii) the number of billing accounts less those accounts already associated with presubscribed lines reported by the carrier – has several key advantages. As explained by TRA, it is similar to the "multiplier" adopted by the Congress in the 1993 Budget Act – i.e., presubscribed lines. It provides certainty in most instances for both the FCC and the carriers; the necessary data can be easily and accurately measured and audited. It is not unduly burdensome; the information is readily available to the carrier and already available, at least in part, to the Commission. And, it is consistent with other programs administered by the Commission, including the Universal Service Fund and Lifeline Assistance assessments.[8]

In contrast, both interstate minutes and interstate revenues pose key problems as potential "multipliers" for computing regulatory fees for IXCs. Interstate minutes of use, for example, are highly variable, often fluctuating widely from month to month, thereby producing anomalies that can distort a carrier's market position. Both interstate minutes of use and interstate revenues are subject to interpretation and subsequent adjustment; indeed, the Commission has acknowledged that in certain instances, interstate minutes of use must be derived through arbitrary formulas. In this regard, it is not at all clear that the NPRM's proposed "cross-over" formula for interstate services not billed on the basis of timed usage is soundly based. Interstate minutes of use and interstate revenues are also commonly the subject of disputes among carriers.

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[8] See Sections 69.116 and 69.117 of the Commission's Rules, 47 C.F.R. §§ 69.116 & 69.117.

Because of these complexities, both interstate minutes of use and interstate revenues as potential "multipliers" would be more difficult for the Commission to verify and, if necessary, audit. These complexities would also contribute to the burden that reliance on either interstate minutes of use or interstate revenues as a "multiplier" would impose on carriers. Smaller carriers in particular are ill-equipped to shoulder such additional, and unnecessary administrative burdens and costs.

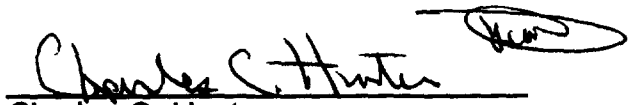
Certainly, the Commission would be well-advised to continue to use what MCI Telecommunications Corporation has characterized as a "fair, equitable, accurate and cost effective" means of calculating the regulatory fees that will be imposed on providers of interexchange services.

III. CONCLUSION

By reason of the foregoing, TRA again urges the Commission to decline to expand the Schedule of Regulatory Fees to encompass resale providers of interexchange service and to retain the current "multiplier" for determining the regulatory fees that are imposed on IXCs. In the event, however, that the Commission elects to levy regulatory fees directly on interexchange resellers, it should adopt "Customer Units" as the multiplier for computing those fees.

Respectfully submitted,

TELECOMMUNICATIONS RESELLERS ASSOCIATION

By: 

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